



ITA No.8102/Mum/2010
Reach Network India Private Ltd.
Assessment Year :2007-08

**आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.8102/Mum/2010
(निर्धारण वर्ष / Assessment Year: 2007-08)

Reach Network India Private Ltd. Unit Nos.14 & 15, 1 st Floor Paradigm Towers, B-Wing MindSpace, Malad (W), Mumbai-400 064.	बनाम/ Vs.	ACIT-9(3) Aaykar Bhavan M.K.Marg Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCT-2555-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri J.D. Mistri-Ld. Sr. Counsel; Shri Ninad Patode
Revenue by	:	Chaudhary Arun Kumar Singh - Ld.Sr.DR

सुनवाई की तारीख/ Date of Hearing	:	20/08/2019
घोषणा की तारीख / Date of Pronouncement	:	16/09/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid matter is a recalled matter since the appeal was earlier disposed-off by the Tribunal vide order dated 12/07/2017. In the said order, the issue of deduction u/s 80-IA(4)(ii) as claimed by the assessee but denied by the revenue, was dismissed vide para 5.4 and 6 of the order. However, upon assessee’s miscellaneous application, this issue has been recalled by the Tribunal vide MA No.66/M/2018 order dated



27/09/2018. Accordingly, the issue has come up for fresh hearing before this bench.

1.2 During the course of hearing, the revenue has urged that it is contemplating filing of writ against the recall of the order but as per submissions from assessee's side, no writ petition has been served on the assessee till date. Therefore, finding no impediment towards re-hearing of the appeal, we proceed to adjudicate the same.

1.3 The only issue to be adjudicated as contained in Ground Nos. 1 to 9 read as under: -

The appellant objects to the order dated 21 September 2010 passed by the Commissioner of Income-tax (Appeals) - 20 , Mumbai (herein after referred to as "learned CIT(A)") under section 250 of the Income-tax Act, 1961 ("the Act") for the aforesaid assessment year on the following among other grounds -

1. The learned CIT(A) erred in not allowing deduction u/s 80-IA(4)(ii) of the Act to the appellant.
2. He erred in summarily holding that the revenues earned by the appellant are from trading in bandwidth, especially since a registered internet service provider can only render internet services in India and is not permitted to trade in bandwidth,
3. He failed to appreciate the fact that the appellant would not have invested heavily in infrastructure had it been a so called "trader of bandwidth".
4. He erred in upholding that "network support services" provided by the appellant to Reach Global Services Limited are distinct and different from the services provided by it to its other clients.
5. He erred in concluding that the revenues earned by the appellant from provision of "network support services" to Reach Global Services Limited have been offset by the expenses on "network support fees" paid to Reach Data Services India Pvt. Ltd.
6. He erred in relying solely on the nomenclature used in the Notes to Accounts of the financial statements without appreciating the fact that the entire revenues earned by the appellant are purely on account of rendition of internet services and the nomenclature so used in the accounts is only a loose / layman's connotation which cannot be appended decisive importance in isolation.
7. He erred in holding that no credible material or evidence had been brought to his attention to demonstrate that the sale of bandwidth represents rendering of internet services, more so since the appellant was never requested to elaborate on this aspect or provided an opportunity to demonstrate the same.
8. He erred in relying on the Assessing Officer's contention that the appellant had been provided an opportunity to submit confirmations from certain parties to substantiate that it was engaged in the business of providing internet services but it failed to do so, especially since this confirmation was sought only from the limited



perspective of verifying the existence of creditors which were appearing in the balance sheet of the appellant, and, not as claimed otherwise by the Assessing Officer.

9. He erred in placing excessive reliance on the above claim of the Assessing Officer without appreciating the fact that the customers of the appellant declined to respond to the creditor verification requests in spite of repeated follow ups by the appellant.

1.4 We have heard and considered the oral as well as written submissions / arguments advanced by respective representatives. Our adjudication to the issue would be as follows.

2.1 Upon perusal of quantum assessment order, it transpires that the assessee was denied deduction u/s 80IA(4)(ii) in view of the observations that (i) the assessee was a mere trader in bandwidth; (ii) the agreement with Govt of India was in respect of Internet Service Provider (ISP) and not mere as a Bandwidth provider; (iii) Its major source of activities were outsourced to its sister concern namely Reach Data Services India Pvt. Ltd. (RDSIPL).

2.2 The assessee, vide letter dated 25/08/2009, submitted that it was primarily engaged in the business of procurement and sale of bandwidth to retail Internet Service providers and corporate users. It was submitted that the company had license to provide ISP services for a period of 15 years. The said submissions were reiterated in its submissions dated 04/09/2009, wherein the attention was drawn to sub-para (c) of para 2 of Schedule 9 of the Balance Sheet to support the same.

2.3 The aforesaid submissions fortified the observation of Ld.AO that the assessee was merely trading in bandwidth. It was also observed that the assessee received payments for providing network services to M/s Reach Global Services Ltd. (RGSL) and made payment for exactly the



same nature of network services to its sister concern namely M/s Reach Data Services India Pvt. Ltd. (RDSIPL). The assessee claimed deduction on account of receipts from RGSL considering that it was the assessee who was providing the services. At the same time, it was making payment to RDSIPL for rendering exactly the same nature of services which tantamount to outsourcing of services which was not permitted as per the license agreement entered into by the assessee with Govt. of India and therefore, the assessee violated the condition laid down for being an internet service provider (ISP). It was also noted that the entities to whom the assessee had sold the bandwidth were themselves internet services providers. In the above background, it was concluded that the assessee was nothing more than a trader in the bandwidth. Further, the assessee never used the purchased bandwidth to provide any internet service on its own and therefore the aforesaid deduction u/s 80IA was denied to the assessee.

2.4 Proceeding further, the assessee had reflected income of Rs.2.21 crores stated to be received from RGSL. The perusal of the agreement revealed that the assessee was hiring out its equipment and network services to RGSL and providing the services to the customers of RGSL for which it was getting pro-rata fees for technical services. The customers to whom the services were provided were not the assessee's customers and it was a case of network assistance rendered by the assessee.

2.5 Finally, the deduction of Rs.134.91 Lacs claimed by the assessee u/s 80-IA was denied while framing the quantum assessment order.



3.1 Aggrieved, the assessee contested the stand of Ld. AO before first appellate authority, however, without any success, vide impugned order dated 21/09/2010. The Ld. CIT(A), after considering assessee's submissions & financial statements including Schedule 9-Accounting Policies & Notes to the accounts, reached a conclusion that the assessee was engaged in the business of wholesale procurement and sale of bandwidth to retail ISPs and corporate users and was not rendering any services in respect to the bandwidth. Although the assessee defended the factum of rendering the services, *inter-alia*, by furnishing sample copies of invoices, however, in the absence of confirmation from assessee's customers, the said submissions could not find favor with first appellate authority. Therefore, it was concluded that the income of Rs.26.97 Crores credited to Profit & Loss Account was on account of sale of bandwidth and therefore, not an eligible business as referred to in Section 80-IA(4)(ii).

3.2 Proceeding further, the network support services fees of Rs.2.21 Crores received from RGSL was held to be on account of rendering of internet services. However, since the assessee had paid a sum of Rs.3.06 Crores to RDSIPL against the same, the net result being a loss, it was held that the assessee was not entitled for deduction u/s 80-IA(4)(ii) against the same also. Aggrieved, the assessee is in further appeal before us.

4.1 The Ld. Sr. Counsel, drawing our attention to various documents placed in the paper-book, pitched for assessee's case by submitting that the assessee was, in fact, engaged in providing bandwidth as well as internet services to its customers since it was not possible to trade in



bandwidth as wrongly noted by the lower authorities. It has been pleaded that lower authorities have completely misunderstood the nature of business being carried out by the assessee. To support the same, our attention has been drawn to the ISP license granted by Govt. of India to the assessee, which was valid for a period of 15 years effective from 05/02/2001. It has been pleaded that the services provided by the assessee were termed as Global Internet Access (GIA) services as mentioned in the invoices issued to the customers. In essence, the assessee rendered internet services to its customers at a particular speed for a stipulated period and what has been termed as sales in the accounts would actually mean utilization of bandwidth for providing internet services and earning income therefrom. The assessee is simply acquiring transmission capacity from other ISPs and in turn, providing internet services to its customers and hence, eligible to claim the said deduction u/s 80-IA(4)(ii).

4.2 To further support the aforesaid submissions, the attention of the bench has been drawn to Audit Reports in Form No. 10CCB as well as in Form No. 3CB wherein the nature of services being provided by the assessee has been described as *internet services*. The attention has also been drawn to various correspondences / intimations / communications done by the assessee with various government agencies / associations. Further, the assessee is stated to be listed as ISP on the website of Telecom Regulatory Authority of India.

4.3 The Ld. Sr. Counsel further pointed out that the services provided by the assessee to RGSL as well as to other customers was quite similar



and therefore, there was no reason to deny the stated deduction to the assessee.

4.4 During the course of hearing, it also transpires that this is the only year in which this deduction has been claimed by the assessee since in all the other eligible years, the assessee has incurred losses.

4.5 The Ld. Sr. DR, on the other hand, contested the submissions by drawing our attention to the observations made by lower authorities in their respective orders. It has been asserted that assessee was a mere trader of bandwidth.

5. Upon careful consideration of stated facts & circumstances, the bench formed an opinion that the factual submissions made before us would require reappraisal by lower authorities since it has been stressed by Ld. Sr. Counsel that trading in bandwidth like a commodity was not permissible / possible and the assessee was providing bandwidth / internet services only and therefore, eligible to claim the deduction u/s 80-IA(4)(ii). The lower authorities have primarily gone by the assessee's submissions made during assessment proceedings as well as financial statements and reached a conclusion that the assessee was trading in bandwidth, which the assessee has not contested before us. Therefore, the matter stand remitted back to the file of learned AO, for adjudication *de novo*, keeping all the issues open, with a direction to the assessee to substantiate his claim. Needless to add that reasonable opportunity of being heard shall be granted to the assessee. Undisputedly, the onus would be on assessee to establish that it fulfils the eligibility conditions of Section 80-IA(4)(ii).



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6. Resultantly, the grounds stand allowed for statistical purposes. The appeal remains partly allowed.

Order pronounced in the open court on 16th September, 2019.

Sd/-

Sd/-

(C.N. Prasad)

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/09/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.